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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/680,998	10/08/2003	Rudi Beyart	2676-4554.1US	7433
24247	7590	03/30/2006	EXAMINER	
TRASK BRITT P.O. BOX 2550 SALT LAKE CITY, UT 84110			ROOKE, AGNES BEATA	
			ART UNIT	PAPER NUMBER

1653

DATE MAILED: 03/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/680,998

Applicant(s)

BEYAERT ET AL.

Examiner

Agnes B. Rooke

Art Unit

1653

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-17 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

**DETAILED ACTION**

***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-9, drawn to a method for screening for a compound where **SEQ ID NO:8** is used, classified in class 514, subclass 12.
- II. Claims 1-9, drawn to a method for screening for a compound where **SEQ ID NO:9** is used, classified in class 514, subclass 12.
- III. Claims 1-9, drawn to a method for screening for a compound where **SEQ ID NO:19** is used, classified in class 514, subclass 12.
- IV. Claims 1-9, drawn to a method for screening for a compound where **SEQ ID NO:2** is used, classified in class 514, subclass 12.
- V. Claims 1-9, drawn to a method for screening for a compound where **SEQ ID NO:5** is used, classified in class 514, subclass 12.
- VI. Claims 10-17, drawn to a method for screening for a compound where **SEQ ID NO:8** is used, classified in class 514, subclass 12.
- VII. Claims 10-17, drawn to a method for screening for a compound where **SEQ ID NO:9** is used, classified in class 514, subclass 12.
- VIII. Claims 10-17, drawn to a method for screening for a compound where **SEQ ID NO:19** is used, classified in class 514, subclass 12.
- IX. Claims 10-17, drawn to a method for screening for a compound where **SEQ ID NO:2** is used, classified in class 514, subclass 12.

- X. Claims 10-17, drawn to a method for screening for a compound where  
**SEQ ID NO:5** is used, classified in class 514, subclass 12.

The inventions are distinct, each from the other because of the following reasons:

Inventions I-V and invention VI-X are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different designs, modes of operation, and effects (MPEP § 802.01 and § 806.06). In the instant case, inventions I-X refer to a method of screening a compound, however inventions I-V are distinct from inventions VI-X because inventions VI-X have additional steps in the method, such as preparing a read out system, which steps are distinct from inventions I-V, which do not utilize this additional step. Therefore, the inventions are distinct since they possess different steps and different modes of operation.

Inventions I-V are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different designs, modes of operation, and effects (MPEP § 802.01 and § 806.06). In the instant case, inventions I-V utilize different peptides of different SEQ ID Nos: 8, 9, 19, 2, or 5, which have different structure and thus different function. Therefore the inventions are distinct.

Inventions VI-X are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different designs, modes of operation, and effects (MPEP § 802.01 and § 806.06). In the instant case,

inventions VI-X utilize different peptides of different SEQ ID Nos: 8, 9, 19, 2, or 5, which have different structure and thus different function. Therefore the inventions are distinct.

Because the inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for the examination purposes as indicated is proper.

Further, note that the prohibition against double patenting rejections of 35 U.S.C. 121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues. See MPEP § 804.01.

Applicant is advised that the reply to this requirement to be complete must include an election of the Invention to be examined even though the requirement be traversed (37 CFR 1.143).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Agnes Rooke whose telephone number is 571-272-2055. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jon Weber can be reached on 571-272-0925. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status

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information about the PAIR system, see <http://pair-direct.uspto.gov>. or call 866-217-

9197.

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**KAREN COCHRANE CARLSON, PH.D**  
**PRIMARY EXAMINER**